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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 24.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Habeas Corpus Petition No.92 of 2006

Kannan @ Mayakannan @
Thiruttu Kannan ... Petitioner

vs.

1. The Government of Tamil Nadu
   rep. by the Secretary
Prohibition and Excise Dept.,
Fort St. George,
Madras-600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to direct the respondents to produce the detenue namely Kannan @ Mayakannan @ Thiruttu Kannan, S/o. Narayanan, before this Court, who is detained as per the order of preventive detention passed by the second respondent in BDFGISV No.414 of 2005 dated 12.08.2005 and confined at Central Prison, Chennai, and set him at liberty; and further direction to call for the records relating to the above said order and quash the same.

For Petitioner : Mr.R. Balakrishnan

For Respondents : Mr.Abudu Kumar Rajarathinam,
Govt. Advocate (Crl. Side)

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner herein challenges the impugned detention order dated 12.08.2005, detaining him as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner as well as learned Government Advocate for the respondents.

3. At the foremost, learned counsel for the petitioner submitted that prior to passing of the detention order, one Maniammal, mother of the detenu made a pre-detention representation on 05.08.2005 to the Detaining Authority, viz., Commissioner of Police, Chennai-8, highlighting the grievance against the proposed detention. The said representation was received by the Detaining Authority on 08.08.2005. The learned counsel for the petitioner has produced a xerox copy of the said representation and the acknowledgement dated 08.08.2005. It is the grievance of the petitioner that the said pre-detention representation was not considered and no reference at all while passing the impugned detention order on 12.08.2005. It is not in dispute that Courts have taken a view that pre-detention representation has to be consiered by the Detaining Authority if the same is received prior to passing of the Detention Order. Inasmuch as the pre-detention representation was received by the Detaining Authority even on 08.08.2005, in the absence of due consideration of the same, we are of the view that the ultimate impunged detention order passed by the Detaining Authority is liable to be quashed. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary
   Government of Tamil Nadu
   Prohibition and Excise Dept.,
   Fort St. George,
   Madras-600 009.
2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008.
3. The Superintendent,
   Central Prison, Chennai.
   (In duplicate for
   communication to the detenue)
4. The Joint Secretary to
   Government, Public
   (Law and Order)
   Fort St. George, Chennai-9.
5. The Public Prosecutor,
   High Court, Madras.

+ one cc to Mr. R. Balakrishnan, Advocate sr no. 21170

MAB(CO)
NM(28.04.2006)

HCP. No.92 of 2006

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